

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSHUA ADAM SCHULTE,

Defendant.

17-CR-548 (JMF)

MEMORANDUM OPINION  
AND ORDER

JESSE M. FURMAN, United States District Judge:

At sentencing on February 1, 2024, the Court ordered Defendant Joshua Schulte to forfeit certain property to the United States and signed a Preliminary Order of Forfeiture as to Specific Property to that effect. But because the Government had not conferred with the defense about the proposed forfeiture order in advance of sentencing, the Court granted Defendant, with the Government’s consent, two weeks to file any motion to amend the forfeiture order. *See* ECF No. 1124. On February 15, 2024, Defendant filed a letter motion objecting to inclusion of Subject Properties 2-9 and 14-32 in the forfeiture order. *See* ECF No. 1129. On February 22, 2024, the Government responded, consenting to the motion with respect to Subject Properties 3 and 4 but otherwise opposing. *See* ECF No. 1131 (“Gov’t Opp’n”), at 3 n.2.<sup>1</sup>

In light of the Government’s consent, the Court will amend the forfeiture order to strike Subject Properties 3 and 4. Moreover, upon reflection, the Court concludes that the Government

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<sup>1</sup> Between the Government’s concession on that front and its concession at sentencing that the Court’s forfeiture order could be modified after sentencing, the Government has waived any argument that amendment of the forfeiture order pursuant to Defendant’s motion is improper. In any event, “there is authority for a district court,” following additional factfinding, “to enter an amended, final order of forfeiture” after sentencing. *United States v. Fishman*, No. 20-CR-160-7 (MKV), 2023 WL 4409020, at \*13 (S.D.N.Y. July 7, 2023) (citing cases).


has failed to prove by a preponderance of the evidence that Subject Properties 2, 5-9, 14, 16, and 20-32 were “used or intended to be used to commit or to promote the commission of” the predicate offenses or constituted “property traceable to such property.” 18 U.S.C. § 2553(a)(3). Yes, there is ample evidence “that Schulte viewed, downloaded, stored, and transported CSAM using electronic devices other than the Desktop.” Gov’t Opp’n 4. And yes, there is ample evidence of Schulte’s “rampant use of computers and storage media to commit crimes and to hide and to destroy evidence of those crimes.” *Id.* But without more, this evidence does not prove, even by a preponderance of the evidence, that Schulte used any *particular* electronic device to commit or to promote the commission of the relevant offenses. And the Government points to no evidence that supports such a conclusion as to Subject Properties 2, 5-9, 14, 16, and 20-32.

By contrast, Schulte does not dispute that there is sufficient evidence to support forfeiture of Subject Properties 1 and 10 through 13. See ECF No. 1129. And the Court finds that there is also sufficient evidence to support forfeiture as to Subject Properties 15 and 17 through 19 — namely, the fact that they were “wiped — not simply reformatted, but securely wiped to remove all digital evidence stored on them, just as the Desktop had been.” Gov’t Opp’n 3. Accordingly, Schulte’s motion is GRANTED as to Subject Properties 2-9, 14, 16, and 20-32, but it is DENIED as to Subject Properties 15 and 17 through 19. No later than February 28, 2024, the Government shall, after conferring with defense counsel, submit a revised proposed forfeiture order consistent with this ruling.

The Clerk of Court is directed to terminate ECF No. 1129.

SO ORDERED.

Dated: February 26, 2024  
New York, New York


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JESSE M. FURMAN  
United States District Judge